

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0104 ST
STATE GROSS RETAIL TAX
For Years 1993, 1994, 1995, AND 1996

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ISSUES

I. Sales/Use Tax– Medical Supplies and Equipment

Authority: 45 IAC 2.2-5-27; 45 IAC 2.2-5-28; IC § 6-2.5-3-2; IC § 6-2.5-4-1; IC § 6-2.5-5-18

Taxpayer protests the proposed assessment of use tax on medical supplies and equipment.

STATEMENT OF FACTS

Taxpayer is a for profit hospital offering both outpatient and in-patient medical care. The taxpayer purchases medical equipment, supplies, and devices to facilitate patient care. All patient care is under the direct supervision of a licensed physician. Audit proposed an assessment of use tax on taxpayer's purchase and subsequent sale of certain medical supplies and equipment. Taxpayer protests these assessments.

I. Sales/Use Tax – Medical Supplies and Equipment

DISCUSSION

Selling at retail is defined by IC § 6-2.5-4-1 as:

- (b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:
 - (1) acquires tangible personal property for the purpose of resale; and
 - (2) transfers that property to another person for consideration.

In the context of medical supplies, an item is considered to be sold at retail to the patient if the item is retained by the patient and the sales and use tax would apply to the transaction pursuant to IC § 6-2.5-3-2. However, certain exemptions apply to the sale of the medical supplies and equipment. The pertinent statute for the medical supplies and equipment at issue is IC § 6-2.5-5-18(a), which states:

Sales of artificial limbs, orthopedic devices, dental prosthetic devices, eyeglasses, contact lenses, and other medical equipment, supplies and devices are exempt from the state gross retail tax, if the sales are prescribed by a person licensed to issue the prescription.

The items in question are used per a doctor's prescription, as defined by 45 IAC 2.2-5-27. The statute's application is further defined by 45 IAC 2.2-5-28(g & h):

(g) The sale to the user of medical equipment, supplies, or devices prescribed by one licensed to issue such a prescription are exempt from sales and use tax.

(h) The term "medical equipment, supplies or devices", as used in this paragraph, are those items, the use of which is directly required to correct or alleviate injury to malfunction of, or removal of a portion of the purchaser's body.

Taxpayer maintains that while the tax would apply to these transactions, IC § 6-2.5-5-18(a) and 45 IAC 2.2-5-28(g & h) create an exemption for certain medical equipment that was assessed in the audit. The test provided by the preceding statutes and code sections require exempt items to be for a single patient's use, be prescribed by a physician, and meet three additional criteria from 45 IAC 2.2-5-28(h):

First, "*directly required*" – requires an immediate effect by the item on the patient's condition. The exemption is limited to an item in proximate contact with the patient for the treatment. Immediate effect requires an existing manifestation of the injury or malfunction to be effected-i.e., a disposable syringe to provide an antibiotic for an existing infection would meet this requirement, a disposable syringe for an immunization would not.

Second, "*correct or alleviate*" – requires the item to alter the patient's condition toward a healthy condition or allows the patient to perform a function that a healthy person could perform without assistance- i.e. a dressing gown, is equally beneficial to a healthy and sick individual, while a bandage provides no benefit to a healthy individual, its use restores a patient to a healthy condition (from bleeding to non-bleeding); likewise, silverware is equally beneficial to both healthy and sick individuals, but an endotracheal tube only benefits one who is unable to normally ingest food.

Third, "*injury, malfunction of, or removal of a portion of the patient's body*"- as was implied by "directly required", the item must be used to correct an existing condition, not

as a preventative measure. Additionally these terms narrow the exemption to only those items used for repair of damage. The exemption is not available for items used for enhancement of the healthy or for prevention of illness.

The six items in question were reviewed as part of an audit of taxpayer's operation, with difficulties in the application of the tax based on variations in the item's names and descriptions due to differences in the product suppliers and/or the preparation of the inventory lists. Taxpayer provided catalog listings and descriptions of the items at issue as part of this appeal, and established that all items in question were prescribed by a physician. Each of the items will be reviewed below as to the applicability of the remaining requirements.

Suture Stapler with Staples- The exemption was originally granted to the staples and not the stapler. On appeal, taxpayer provided information confirming the stapler as disposable with its use limited to a single patient. The stapler is not retained by patient, it serves as a tool to apply the staples that will alleviate the injury. Consequently, the exemption would not apply to the entire item, only to the percentage value of the staples within the item.

Endotracheal "Murphy" Tubes- While the auditor concurred with the taxpayer that endotracheal tubes were exempt, the endotracheal tubes inventoried as "Murphy" tubes were overlooked. The exemption would apply to the endotracheal tubes listed as "Murphy" tubes as well.

Procedure Packs (Trays)- These purchases consist of a variety of items used to perform a medical procedure on a single patient. The majority of the purchases at issue are for cesarean birth, normal birth, and laparotomy procedures. While all the items are for single patient use, not all of the items are "...directly required to correct or alleviate injury to malfunction of, or removal of a portion of the purchaser's body." 45 IAC 2.2-5-28(h). The majority of the items involved are non-exempt items such as dressing gowns. After review of the lists, prices, and quantity of items in each pack, 10% of the purchase price of the packs is exempt, while the remaining 90% constitutes the purchase price of taxable items.

Suction Tubing with Light Source- This device is used to suction off fluids during surgical procedures; it is used to control the patient's bleeding and disposed of after a single patient use. The item, while assisting in the surgical procedure, does not serve to directly alleviate an injury or malfunction of the patient. The exemption would not apply to this item.

Feeding pump sets- Devices are similar to IV sets and are used to administer nutritional substances. The devices hold the nutritional substance and connect to the patient to allow its delivery. Some confusion existed related to the pumps themselves, which are reusable and are not tax exempt, and the pump sets. Given that the pump sets are directly used to alleviate a patient's digestive malfunction and are single use, the tax exemption applies.

Trach Care sets- These kits are used to clean and keep tracheotomy tubes operational while they are connected to the patient. The kits are not used directly on the patient, rather they serve to maintain an item that is directly used on the patient. Thus, although the item is used with a patient's treatment and disposed of after single patient use, the exemption would not apply to this item.

FINDINGS

Taxpayer protest sustained in part and denied in part.

JM/PE/MR—990912